

Stanley T. Kaleczyc
Kimberly A. Beatty
BROWNING, KALECZYC, BERRY & HOVEN, P.C.
139 North Last Chance Gulch
P.O. Box 1697
Helena, MT 59604-6669
Phone: (406) 443-6820
Fax: (406) 443-6883

RECEIVED

FILED

4:53

AUG 20 2004

PATRICK E. DUFFY, CLERK
By *Patrick E. Duffy*
Deputy Clerk

Attorneys for Defendants.

RECEIVED
AUG 25 2004
CLERK, U.S. DISTRICT COURT
DISTRICT OF MONTANA
BILLINGS, MONTANA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BUTTE DIVISION

MAGTENASSET MANAGEMENT
CORPORATION,

Plaintiff,

v.

MIKE J. HANSON and ERNIE J. KINDT

Defendants.

Case No. CV-04-26-BU-RFC

05 - 499

MOTION FOR SUMMARY
JUDGMENT

RECEIVED
JUL 18 2005
U.S. DISTRICT COURT
DISTRICT OF DELAWARE

Mike J. Hanson and Ernie J. Kindt, Defendants here, through their attorneys, Browning, Kaleczyc, Berry & Hoven, P.C., hereby move this Court pursuant to Fed. R. Civ. P. 56 for an order granting summary judgment in their favor. In support of this motion, Defendants state:

1. It is undisputed and admitted by Plaintiff Magten Asset Management Corporation ("Magten") that at all times material to this Complaint Magten was not a creditor of Clark Fork and Blackfoot, LLC, ("Clark Fork").
2. On July 23, 2004, the Honorable Charles G. Case II, United States Judge for the Bankruptcy Court, Delaware, has determined that Magten was not a creditor of Clark Fork.

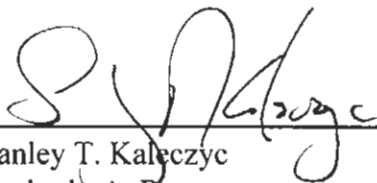
- 1 3. Insofar as Magten's Complaint is based upon duties which Defendants Messrs.
2 Hanson and Kindt allegedly owed to creditors of Clark Fork at the time
3 NorthWestern Corporation, as sole Member and Manager of Clark Fork, effected
4 the Transfer of the Utility Assets and Liabilities of Clark Fork LLC to its parent
5 NorthWestern, and since Magten has both admitted and it has been judicially
6 determined that Magten was not a creditor of Clark Fork at the time of the
7 transfer, Defendants could not have, and as a matter of law did not, owe any duty
8 to Magten.
- 9 4. Magten has no standing to assert that the Defendants breached any fiduciary duty
10 allegedly owed to any third parties.

11 For the foregoing reasons, and the reasons more fully set forth in Defendants'
12 Memorandum in Support of Their Motion for Summary Judgment, Defendants respectfully
13 request that this Court enter Summary Judgment in favor of Defendants and dismiss with
14 prejudice the action against them.

15 DATED this 20th day of August, 2004.

16 BROWNING, KALECZYC, BERRY & HOVEN, P.C.

17
18 By



19 Stanley T. Kaleczyc
20 Kimberly A. Beatty
21 BROWNING, KALECZYC, BERRY & HOVEN, P.C.
22 139 North Last Chance Gulch
23 P.O. Box 1697
24 Helena, MT 59604-6669
25 Phone: (406) 443-6820
26 Fax: (406) 443-6883

27 Attorneys for Defendants.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August, 2004, a true copy of the foregoing was mailed by first-class mail, postage prepaid, addressed as follows:

James Goetz
J. Devlan Geddes
Goetz, Gallik & Baldwin, P.C.
35 North Grand
P.O. Box 6580
Bozeman, MT 59771-6580

Bonnie Steingert
John W. Brewer
Fried, Frank, Harris, Shriver & Jacobson, LLP
One New York Plaza
New York, New York 10004



BROWNING, KALECZYC, BERRY & HOVEN, P.C.